IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 32681 of 2007(N)

OS.83/1999 of PRINCIPAL SUB COURT,KOCHI
.....

PETITIONER:
----

1. **K.S.SANTHOSH BURLEIGH,**
   S/O.K.J.BURLEIGH, CC X/1290,
   SOUTH THAMARAPARAMBU, FORT COCHIN VILLAGE,
   COCHIN TALUK.

2. **K.S.PRAKASH BURLEIGH,**
   S/O.K.J.BURLEIGH, DO. DO.

3. **ANNIE BURLEIGH, W/O.LATE K.G.BURLEIGH,**
   KURISINGAL HOUSE, KOCHI.

4. **THOMAS BURLEIGH, S/O.K.G.BURLEIGH,**
   DOOR NO.10/1291, K.B.JACOB ROAD,
   FORT KOCHI.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.N.K.KARNIS
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENTS:
----

1. **RITA OMAR W/O.OMAR, 756 RWA PERULA,**
   CONDONOVA HIGIENOPOLIN, NANADIRA, S.P.6600 - 000,
   BRAZIL, REPRESENTED BY POWER OF ATTORNEY HOLDER
   CHARLES XAVIER, KURISINGAL, FORT COCHIN.

2. **NAJMA BARNETO @ NAJMA WAHAB, 1198,**
   2ND FLOOR, KAMPAMMA LIAYOUT, OIL MILL ROAD,
   LINGARAJAPURAM, BANGALORE - 560084.

**3. NIRMAL.J.WAHAB, 1198, 2ND FLOOR,
HAMPAMMA LIAYOUT, OIL MILL ROAD,
LINGARAJAPURAM, BANGALORE - 560084.**

**4. DR.K.B.JACOB, S/O.K.G.BURLEIGH,
JACOB NURSING HOME, THOPPUMPADY.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

==========

W.P.(C) No. 32681 OF 2007

==========

Dated this the 5th day of November 2007

JUDGMENT

This writ petition is filed for a direction to the Sub Court, Kochi to hear and pass orders on Issue No.10 in O.S.No.83 of 1999 before proceeding with the trial of the case. Issue No.10 relates to the question of court fee. The court fee issue has to be decided at the earliest and in some cases, valuation has to be amended and in some other cases even the jurisdiction of the court may be ousted. So far as this case is concerned, being a Sub Court, the question of pecuniary jurisdiction may not arise, but the question of amendment to the plaint may be involved and it is to be stated that under Section 12 of the Court Fees Act the issue has to be decided at the earliest and a direction be given to the plaintiffs.

Therefore, I direct the learned Sub Judge, Kochi to consider issue No.10 regarding court fee at the first instance itself and then after passing an order, if necessary, direct the plaintiffs to pay additional court fee and amendment of the plaint and thereafter in case of such a direction to permit the defendants to file fresh additional written statement and then proceed

with the trial in accordance with law. It is made clear that the court shall not embark on the trial of the case before issue No.10 is answered first.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-